

SENATE BILL 2471  
By McNally

AN ACT to amend Tennessee Code Annotated, Title 8,  
Chapter 44, Part 1, relative to enact the "Sunshine  
In Government Improvement Act of 2006".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be known and shall be cited as the "Sunshine in Government Improvement Act of 2006".

SECTION 2. Tennessee Code Annotated, Section 8-44-101, is amended by deleting the section in its entirety and substituting instead the following:

(a) Because secrecy in government destroys public confidence and encourages abuse, information concerning the operations of all governing bodies should be freely available to all persons to allow them to participate equally in decisions affecting their lives. The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret.

(b) In recognition of the constitutional right of citizen access to government information, this part shall not be construed to limit any rights and privileges contained in the Constitution of Tennessee, including those contained in Article I, Section 19.

SECTION 3. Tennessee Code Annotated, Section 8-44-102, is amended by deleting the section in its entirety and substituting instead the following:

(a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as specifically provided in this chapter.

(b)(1) Governing body” means:

(A) Any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on matters of policy or administration, including but not limited to:

(i) All legislative, regulatory, administrative, quasi-judicial and quasi-governmental bodies who derive any portion of their funding from taxes or which are supported by, in any form or fashion, public fees or grants;

(ii) Associations and not for profit organizations that represent public officials and are supported by public funds, including, but not limited to, dues and service fees;

(iii) The board of directors or governing group, regardless of name or title, of any entity that operates as the functional equivalent of a governmental agency. In determining whether a private entity operates as the functional equivalent of government, consideration shall be given to the level of funding from the government; the extent of government involvement with, regulation of, or control over the entity; and whether the entity was created by the government.

(iv) The board of directors or governing body of a community action agency which administers community action programs under the provisions of 42 U.S.C. §2790.[repealed];

(v) Any governing body so defined by this section shall remain so defined, notwithstanding the fact that such governing body may have

designated itself as a negotiation committee for collective bargaining purposes;

(vi) The board of directors of any not for profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to the provisions of title 7, chapter 54 or 58. The provisions of this subdivision shall not apply to any county with a metropolitan form of government and having a population of four hundred thousand (400,000) or more according to the 2000 federal census.

(vii) The board of directors of any association or nonprofit corporation authorized by the laws of Tennessee that:

(a) Was established for the benefit of local government officials or counties, cities, towns or other local governments or as a municipal bond financing pool;

(b) Receives dues, service fees, or any other income from local government officials or such local governments that constitute at least thirty percent (30%) of its total annual income; and

(c) Was authorized as of January 1, 1998, under state law to obtain coverage for its employees in the Tennessee consolidated retirement system.

(viii) The provisions of this subdivision shall not be construed to require the disclosure of a trade secret or proprietary information held or

used by an association or nonprofit corporation to which this chapter applies. In the event a trade secret or proprietary information is required to be discussed in an open meeting, the association or nonprofit corporation may conduct an executive session, pursuant to § 8-44-103(c), to discuss such trade secret or proprietary information; provided, that a notice of the executive session is included in the agenda for such meeting.

(a) "Proprietary information," as used in this subdivision, means rating information, plans, or proposals; actuarial information; specifications for specific services provided; and any other similar commercial or financial information used in making or deliberating toward a decision by employees, agents or the board of directors of such association or corporation; and which, if known to a person or entity outside the association or corporation, would give such person or entity an advantage or an opportunity to gain an advantage over the association or corporation when providing or bidding to provide the same or similar services to local governments; and

(b) "Trade secret" means the whole or any portion or phrase of any scientific or technical information, design, process, procedure, formula, or improvement which is secret and of value. The trier of fact may infer a trade secret to be secret when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes.

(ix) The board of directors of the Tennessee Performing Arts Center Management Corporation shall be subject to, and shall in all respects comply with, all of the provisions made applicable to governing bodies by this chapter; or

(x) The board of directors of any nonprofit corporation which through contract or otherwise provides a metropolitan form of government having a population in excess of five hundred thousand (500,000) according to the 1990 federal census or any subsequent federal census with heat, steam, or incineration of refuse; or

(b)(2) "Meeting" means any instance where two (2) or more members of a governing body gather in person or use any form of simultaneous communication to:

(A) Deliberate, exchange, or receive information relevant to a pending matter, or,

(B) Make a decision on any matter of policy or administration. The term "simultaneous communication" shall include, but not be limited to, any form of electronic communication, including but not limited to Internet communications of all forms and manner.

(C) Inspect or tour any project or program, if such on-site tour or inspection is part of the decision-making process.

(c) Nothing in this section shall be construed as to require a chance meeting of two (2) or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, simultaneous communication, or electronic

communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this act.

SECTION 4. Tennessee Code Annotated, Title 8, Chapter 44, Part 1, is amended by adding the following new section to be designated as § 8-44-103 and by renumbering subsequent sections accordingly:

§8-44-103. Exemptions. – (a) No exemptions to this act shall be valid unless specifically contained in this chapter.

(b) Each exemption added by the general assembly shall remain effective for five (5) years after its passage. An exemption shall “sunset,” and become void and of no effect unless readopted by the General Assembly prior to its “sunset” date. Any current exemption to this Act shall expire on July 1, 2007, unless reauthorized by the general assembly.

(c) Before any meeting shall be closed:

(1) Members of the governing body shall vote by roll call in public view on the question of whether to close the meeting under one of the exemptions in this chapter; and

(2) The presiding officer or counsel representing the governing body of the public body shall cite in public view the specific, applicable exemption and explain to the members of the governing body and any members of the public present that no votes are permitted by law to be taken in closed session, nor is the governing body permitted by law to deliberate toward a decision on any matter during the closed session.

(d) Failure to abide by procedures set out in this chapter shall constitute a violation of this act.

(e) Provided the requirements of subsection (c)(1) and (2) of this section are fully complied with, a meeting or a portion of a meeting of a governing body subject to this chapter may be held in closed session in the following circumstances:

(1) Any meeting or portion of a meeting of the state information systems council to discuss sensitive security threats to the systems under its control, as outlined by § 4-3-5509.

(2) Any meeting or portion of a meeting of a governing body to discuss with legal counsel present and pending litigation to which the public body is a party.

(3) Any meeting or portion of a meeting of a public body for the purpose of discussing a pending controversy that in all probability, as demonstrated by clear and convincing evidence, will result in litigation.

(4) Any meeting or portion of a meeting of the board of directors of any nonprofit corporation which contracts with a state agency to receive community grant funds in consideration for rendering specified services to the public, provided that community grant funds comprise at least thirty percent (30%) of the total annual income of such corporation, if such meeting is to discuss matters involving confidential doctor-patient relationships, personnel matters, or matters required to be kept confidential by federal or state law or regulation. Copies of such federal or state law or regulation used to exempt that portion of a meeting shall be provided upon request.

(5) Any meeting or portion of a meeting of the board of directors of any not-for-profit corporation authorized by the laws of Tennessee to act for the benefit or on behalf of any one (1) or more counties, cities, towns and local governments pursuant to the provisions of title 7, chapter 54 or 58, if the county has a metropolitan form of government and a population of four hundred thousand (400,000) or more according to the 2000 federal census.

(f) Any meeting or portion of a meeting to be closed pursuant to subsections (e)(2) or (3) of this part shall be conducted by the lawyer for the governing body, who shall advise the members that:

(1) The meeting is one between the lawyer and the client;

(2) The meeting is held for the sole purpose of relating confidential client communication and legal advice regarding pending or anticipated litigation;

(3) All comments from the members shall be directed to the lawyer; and

(4) No deliberation or discussion toward a decision shall take place among the members except in open session.

(g) If a governing body subject to this chapter conducts a meeting or portion of a meeting in closed session under an exemption set out in this chapter, only that meeting or portion of a meeting protected by the specific exemption shall be closed.

(h) Nothing in this chapter requires that a governing body subject to this chapter hold a meeting or any portion of a meeting in closed session.

SECTION 5. Tennessee Code Annotated, Section 8-44-104, is amended by deleting the section in its entirety and substituting instead the following:



(a) **Notice of Regular Meetings.** Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.

(b) **Notice of Special Meetings.** Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.

(c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

(d) For special meetings, as described in subsection (b), adequate public notice means such notice based on the totality of the circumstances as will fairly inform the public. To qualify as adequate public notice:

(1) The notice must be disseminated in a manner and location where members of the community affected and in which the meeting is being conducted can become aware of such notice;

(2) The contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken; and,

(3) The notice must be disseminated at a time sufficiently in advance of the actual meeting to give citizens the opportunity to become aware of and to attend the meeting.

(e) Any materials to be used by members of the governing body of the public body or its staff in any meeting shall be available for public inspection and copying at the same time it is made available to any member of the governing body.

(f) Proof of notice under this section shall be preserved and maintained for one (1) year in the office that administers or staffs the governing body of the public body and shall at all times be open for public inspection and copying.

SECTION 6. Tennessee Code Annotated, Section 8-44-105, as it is currently numbered, is amended by deleting the section in its entirety.

SECTION 7. Tennessee Code Annotated, Section 8-44-106, is amended by deleting the section in its entirety and substituting instead the following:

(a) The circuit courts, chancery courts, and other courts which have equity jurisdiction, have jurisdiction to issue injunctions, impose penalties, impose civil forfeitures, and otherwise enforce the purposes of this part upon application of any person or entity.

(b) In each suit brought under this part, the court shall file written findings of fact and conclusions of law and final judgments, which shall also be recorded in the minutes of the body involved.

(c) Any action taken at a meeting in violation of this part shall be void and of no effect; provided that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned.

(d) The court shall permanently enjoin any person or body adjudged by it to be in violation of this part from further violation of this part.

(e) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period of one (1) year from the date of entry, and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part.

(f) Any member of a governing body of a public body found by the court to have participated in a violation of this act shall be assessed a civil penalty in an amount not to exceed fifty dollars (\$50.00). The civil penalty shall not be reimbursed from public funds or from any insurance policy where premiums are paid from public funds. Each separate occurrence of such meetings not held in accordance with this act constitutes a separate violation. (This penalty shall be in addition to and not in lieu of any other penalty provided herein.)

(g) Any person or entity who substantially prevails in any application for relief under this act shall receive court costs, discretionary costs, and reasonable attorney fees, which shall be the responsibility of the governing body of the public body. At the discretion of the court, court costs, discretionary fees, and reasonable attorney fees can be assessed against the member who participated in the unannounced meeting. This penalty shall be in addition to and not in lieu of any other penalty provided herein.

(h) This chapter shall be broadly construed so as to give the fullest possible access to meetings at which public business is conducted and in order to discourage violations of the spirit and purpose of this act.

(i) Any exemptions to this chapter shall be narrowly construed so as to give the fullest possible access to meetings at which public business is conducted and in order to discourage violations of the spirit and purpose of this chapter.

(j) The burden of proof for justifying any action claimed to be in violation of this act shall be upon the governing body of the public body or its members. The justification must be proven by clear and convincing evidence.

SECTION 8. This act shall take effect July 1, 2006, the public welfare requiring it.

